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Strachan, John (4)

OBSERVATIONS

20239

ON A

"BILL FOR UNITING THE LEGISLATIVE
COUNCILS AND ASSEMBLIES

OF THE PROVINCES OF

LOWER CANADA AND UPPER CANADA
IN ONE LEGISLATURE,

AND

TO MAKE FURTHER PROVISION FOR THE GOVERNMENT
OF THE SAID PROVINCES."

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OBSERVATIONS

ON

“ A Bill for uniting the Legislative Councils and Assemblies of the Provinces of Lower Canada and Upper Canada in one Legislation, and to make further Provision for the Government of the said Provinces.”

THE great object of the measure must be to foster that national principle which ought to connect the people of both the provinces with the parent state, and which will become more simple and intimate, by their junction. For, considering themselves the members of one state, though scattered over an immense country, and looking to one centre of government for protection and relief, they will in time feel the necessity of assimilating themselves more and more to one another. That prominent feature in the character of all nations, by which we experience ■ friendship and attachment inclining us to associate with subjects of the same government, will, by degrees, acquire among them its proper ascendancy, and, instead of looking upon each other as springing from different nations, they will acknowledge themselves members of the same community, having the same views and interests; and they will feel, that it is incumbent upon them not

■

only to avoid heats and jealousies, but to cultivate the habits of social and friendly intercourse. These good effects will no doubt be some time in manifesting themselves to any extent, but that they will be gradually engendered, may be reasonably inferred from the experience of other unions. It is indeed agreeable to the nature of things, that those who live at the extremities of an extensive empire or province, finding it necessary to keep up a connexion with those who live at the seat of government for protection, justice, or favour, and to request their assistance and support, should become attached to their benefactors; and where a regular intercourse of dependence is established, a union of measures, of views, and feelings must soon follow.

Deeply sensible of the great importance of these and other advantages which will in time flow from a union of the Canadas, if wisely managed, my sole object has been to suggest such amendments as would, in my humble opinion, secure its success. In doing this, I propose no alteration which would tend to raise discontent, unless it produces by its adoption a decided and essential advantage; while, on the other hand, I reject no provision, because it may excite clamour if it appear necessary to render the union successful and complete.

Taking the printed amended bill as the foundation of our deliberations,

It was proposed to drop the 16th clause, which makes it lawful for the Governor-in-chief, &c., if at any time he shall deem it expedient, to summon and authorize by an instrument under his hand and seal, two members of the Executive Council of each Province, to sit in every Assembly, with power of debating therein; and with all other powers, privileges, and immunities of the members thereof, except that of voting.

This provision was no doubt suggested by the difficulty of communicating to the House of Assembly the sentiments and views of the Colonial Government, respecting the different measures that come under deliberation, and the reasons which render it useful and expedient to reject or adopt them. At present, the Local Government has no way of informing the House of Assembly of its opinions and views for recommending any course to its consideration, except by written documents, and these seldom give satisfactory explanations or prevent misrepresentation. But neither, it is humbly believed, would this provision remedy the evil. Executive counsellors so placed would excite only jealousy and suspicion, instead of being listened to, they would be held up to ridicule and scorn; and it is in truth to be apprehended, that no persons of capacity would be found willing to expose themselves in such a situation to become the laughing-stocks of the representatives of the people, for

having no vote, they could not by any talents or caution acquire influence. As, therefore, this clause would be found a useless deviation from the principles and practice of the British constitution, it becomes the less necessary. Besides, the duties expected from these counsellors can be more effectually performed by members placed in the house by the legitimate influence of the local government. It is true, only two can be thus nominated, one for the University of Upper Canada, which has the power by law, when established, to send a representative; and another for the Borough of William Henry. Now, although these can never exercise any paramount influence over the decisions of the house, they can give the explanations for which the Executive Counsellors were deemed necessary, and with much greater effect, as they would have the power of voting.

At the same time, there is nothing to prevent executive counsellors from being elected members of the House of Assembly, if they can make themselves agreeable to the electors.

The 18th clause of the printed bill, which extends the duration of parliament from four to five years, has been generally objected to in both provinces.

In the draft, the period is left blank, for it is humbly conceived that an addition of one year only is hardly an equivalent for the clamour

which it may excite; but were the alteration from four to seven years, the benefit would be incalculably great.

" The business to come before the united parliament, will be more important, various, and complex, than that which comes before the separate legislatures. To acquire a knowledge of it, and the multiplied interests which it involves, seems to demand more time than the present period affords;—heats and prejudices will die away or be removed, a facility in transacting business will be acquired, and mutual confidence between the different branches of the legislature promoted. It is therefore humbly submitted, that the term of the continuance of the Assembly, if changed, be made seven years instead of four, for this latter period is so short as frequently to produce the most serious inconvenience. To extend the duration of parliament would greatly increase the power and influence of the executive government; for it has been found, that the last sessions proceed more harmoniously and usefully than the first, because a short time proves that government can have no other view than the general good. But this fact is scarcely established in the minds of the members, before they are obliged to study the prejudices of their constituents, in order to succeed at the next election, and thus the expected good is often lost. The extended period would afford longer time

for the ripening of this good impression, which, while it influenced the conduct of members usefully, would have a beneficial effect on their elections. It may be said, in opposition, that such a change would excite clamour, and afford fewer opportunities to the people of testifying their opinion of their representatives. But it must be obvious that one steady well-concerted policy will be necessary to consolidate the provinces; and this can only be effectually pursued by a deliberative body, uninterrupted by popular changes and prejudices. Such an amendment would strengthen the hands of the Colonial Government, which will require more power and patronage than ever should the union take place.

The 23d clause, respecting the rights, privileges, immunities, and advantages, of members, is omitted in the draft.

The legislatures of Lower and Upper Canada have enjoyed similar privileges with the parliament in England, since their first establishment, and their exercise has been so very unfrequent, that it has never been complained of. In truth, when duly considered, it will be found that the provincial parliament could not protect itself from the most serious insult were these privileges denied it; and that they are essential to its very existence, and only such as the lowest courts of justice daily exercise. It is therefore proposed to drop the clause, leaving the matter in its present

state, since the enjoyment of certain privileges is indispensable to the exercise of its functions; for if the two houses are deprived of the power of committing for contempts, they become totally incapable of maintaining their authority.

24th Clause. The latter part of the 24th clause respecting language is altered in the draft.

It is deemed sufficient that the written proceedings and records in the legislature, and in all courts of justice, be in the English language. Thus far, the clause, if so amended, is most reasonable and expedient, and will, in a very short time produce the desired effect, while the omission of the second part does away with that galling insult which it appears to imply. It is natural for all men to speak the language of their parents, for it is connected with all our dearest and earliest associations.

28th Clause. In the draft the 28th clause is omitted which respects the salaries of the officers, as it appears to infringe upon the 18th of George the Third.

This matter may with great safety be left to the united legislature, which will soon take it up, because the salaries will be paid ■ matter of course till some other mode is provided.

These comprise the principal alterations which we have by agreement proposed to make in the printed bill; but to render the measure successful and complete, I most humbly conceive that it becomes necessary to introduce several other important provisions. In order to perceive their necessity, I beg to be indulged in examining the practical effects with which the printed bill or draft, with the alterations proposed would, in all probability be attended.

The number of members of the United Assembly will, in a very few years, amount to 120: now it does appear to me that the governor-in-chief will find it extremely difficult to manage so great a multitude, more especially if we consider the materials of which it is composed.

Of these 120 members, the executive government can never return more than two, and its patronage is very limited and trifling. Many appointments are made in England, and if they happen to be made injudiciously, they have a direct tendency to diminish the influence of the governors, on whom every officer ought to put his dependence, and with whom he ought to co-operate. The ancient French seigniors, with whom the king's government might be supposed to have some weight, have, by the operation of the present constitution lost all influence among their tenantry, and can seldom procure a single vote even for themselves. In Lower Canada, the representa-

tion is almost entirely in the hands of the notaries and demagogues, who are at pains to flatter the passions and prejudices of the people. The peasantry are in general so ignorant as to have no distinct notion of a free government, few of them can either read or write, and no care is taken to rescue them from this abject state of ignorance. Indeed their leaders are anxious to prevent any assimilation to the English character, as they fear that by adopting our opinions they would cease to be Frenchmen ; hence they continue in the same state from year to year, opposing with the most inflexible obstinacy all modern improvements in the most common arts and employments, and standing intrenched behind a difference of manners, language and condition, lest the Canadian or French character should be lost.

The Notaries, a very numerous body, appear the most active in continuing the present system of misgovernment, and of opposing every sort of improvement. They have a continued and intimate intercourse with the common people. It is their business to make all contracts, marriage settlements, and wills. They direct the distribution of property among successors, and perform almost every act which requires to be committed to writing. In the discharge of these duties, the notaries obtain an ascendancy over the common people, which supersedes every other. They reach the height of their consequence when they

are commissioned by the government, and would not be known beyond the precincts of their respective parishes, were it not for the facility which the House of Assembly affords them of uniting with other demagogues, and forming a party against the government. Under their management, French feelings, principles, and views of policy have hitherto regulated the Assembly of Lower Canada. It was not their wish to assimilate the country or its institutions to the parent state, nor to promote British settlements, nor to improve agriculture and commerce, but to counteract, as far as possible, these beneficial purposes, and to extend and perpetuate the French language, laws, and Roman Catholic institutions with the national feelings connected with them. If such be the character of the persons who at present enjoy a decided preponderance in the legislature of Lower Canada, and the principles of their policy, we have reason to infer that in as far as they are concerned they will pursue the same policy in the United Legislature, and will continue to obstruct all rational improvements and foster national prejudices.

Although the number of members will, by the proposed bill, ultimately reach 120, yet the first parliament will hardly exceed one hundred, and by the law as it now stands, the notaries and their friends can return fifty. This much is admitted on all sides, that the English part of the

population cannot send a single representative. It is true ■ few Englishmen are always found in the House ; this was at first necessary, in order to put in motion the new system of government, till the French Canadian Members became familiar with constitutional forms, when they assumed to themselves the exclusive management of the public concerns of the country, and have since regulated the elections for the assembly at their pleasure. Some Englishmen are indeed still found in the Assembly, but they are such as meet the views of the party, and have for many years been the most violent opponents of the government ; they know that their election depends upon the good-will of a few Canadian leaders, and therefore their conduct must be such as to conciliate their patrons.

The fifty members returned by the Canadians, will in all probability constitute a majority in the United House of Assembly, because the upper province will not return more than forty-four members, and the new townships in Lower Canada ten. Were all these to attend, the English would have fifty-four to fifty, or a majority of four, but when it is considered that the members from Upper Canada, should the meeting of the legislature be at Montreal or Quebec, will not all attend, ■■ some will have upwards of 600 miles to travel, and that if they should generally take their seats, they are not bound together by such strong

ties as the Roman Catholics are, and further that the greater number will meet utter strangers to one another, and therefore without having agreed in any system of policy, they will be disjointed and separated. It is not too much to suppose, that the present party, which commands the Assembly of Lower Canada, will for a time, should no additional provisions be made, command the United Assembly.

The first and most effectual remedy for this evil would be to divide the country anew, and while a decided majority was given to the English, the whole number of representatives should not exceed 75. This number would be amply sufficient to conduct public affairs, and might be regulated, for it appears a desperate case to attempt to manage nearly double the number. But this plan may be considered a violent innovation on the constitution, and may be deemed impracticable, the next best step is to confine the elective franchise to persons possessing a freehold of five pounds per annum, instead of forty shillings, in the country; and in the town, of 10*l.* yearly value, or having resided one year in a house paying a rent of 20*l.* per annum. The first effect of this would be, that in Lower Canada the most ignorant class would be excluded from voting, and thus the election would be conducted by men over whom the influence of the notaries is not so great, so that the French seigniors or their chil-

dren would sometimes be chosen. Secondly, in the towns of Quebec, Three Rivers, and Montreal, which return ten members, the English could return at least six, or perhaps eight, as they are chiefly in possession of the property of these towns. Such an addition to the English members would be of the greatest benefit, and contribute very much to the ultimate success of the measure. Should this alteration be deemed objectionable, I have only to remark that unless the union be founded upon principles which will ensure its success, some other measure had better be adopted. It may be proper however to observe that when the 31st of Geo. III. chap. 31, was brought into parliament, the freehold qualification was fixed at 5*l*. The truth is, it becomes safer to extend privileges of this kind to Society, as it gets more improved, because intelligence, prudence, and good feeling, are calculated to counteract the wildness which naturally prevails in assemblies purely democratic.

If we consider the union as in operation on the principles adopted in the printed bill, or the assented draft, there are three general heads of policy on which the parties likely to compose the legislature will differ, and two on which they will in all probability agree.

First, in the distribution of the revenue.

On this subject it is reasonable to anticipate great difference of opinion between the two pro-

vinces. In Lower Canada the legislature has been in the habit of paying for the building of court houses and gaols, out of the provincial treasury; and when the public funds were deficient, a special tax has been imposed on commerce, to defray these local charges. In this province there are ■■ districts or county rates, and all charges are made on the general treasury. In Upper Canada these matters are conducted differently; each district, and there are eleven in the province, is assessed one penny in the pound, on all property personal and real, and this will soon yield 20,000*l.* per annum, and its proceeds will yearly increase as lands continue to be granted and brought into cultivation, and the population increases. Besides this, there is also ■ general tax of one eighth of a penny per acre, on all lands for the purpose of making roads; and this exclusive of the common road law, which is of itself ■ severe tax. This one eighth of ■ penny per acre, when regularly collected, which it will now be, from arrangements adopted last winter, will yield ■ revenue of 10,000*l.* per annum, which will likewise increase as lands are granted, making ■■ aggregate of nearly 30,000*l.* To this may likewise be added the expense of supporting the District Courts and the Quarter Sessions. four times in each year, when juries are called together, and the district judge and magistrates attend to try causes and offences against the

peace. These district courts are at present supported by certain fees paid by the litigants, and exercise a jurisdiction to the extent of 40*l.* in simple contract debts, and 15*l.* in trespass. These sums comprehend nine-tenths of the causes, and, consequently, the courts are of great advantage. Nevertheless the expense of supporting these institutions, including the loss of time and attendance, cannot be less than 10,000*l.* per annum, making an aggregate for local institutions of not less than 40,000*l.* Now as there are no such institutions in Lower Canada, but the same services are performed in a different manner, at the expense of the provincial treasury, a ground of difference is apparent. For the inhabitants of Upper Canada may with justice contend, that the different counties and districts of Lower Canada should pay their local institutions, and so relieve a large portion of the revenue for the purpose of general improvements. Nor is it unworthy of remark, that the adoption of similar institutions in Lower Canada would be highly politic, as they would introduce English feeling, by familiarizing to the minds of the French population English laws and customs. If matters remain as they now are after the union, one of two things must follow; either that these local expenses now paid by the districts of Upper Canada will be charged against the provincial revenue, which is impossible, as it is hardly able to meet the present

charge; or the united province must exhibit the anomaly of one part paying by local assessment, ■ very large sum annually, while another part defrays the same from the general revenue. There cannot be the slightest reason for expecting that local assessments will be imposed in Lower Canada, so long as the majority of the members are French; indeed, on this point, there is reason to believe that all the representatives of Lower Canada, both French and English, would agree.

The second point on which the representatives of the two provinces would disagree is commerce.

For more than twelve years, the legislature of Lower Canada has been a scene of bitter conflicts and increasing dissensions, between the French and English parts of the population. The sessions, instead of being occupied in discussing measures of public utility, have been wasted in disputes respecting their respective powers and privileges, or in vehement and systematic attacks upon the judges and other local authorities. In the meantime, the public interests have been totally neglected, and no steps have been taken to increase the commerce of the country, or to develop its resources.

The upper province has been treated ■ an alien; her exports have been subjected to taxation, and even her imports were at one time subject to ■ higher duty than those of Lower

Canada. There is no reason to expect that ■ body so constituted as the members for Lower Canada are at present, will in the united legislature adopt a more liberal commercial policy. The custom of Paris and the code civil, as has been generally remarked, would require ■ notary public at the merchant's elbow. Now the beauty of the English commercial system which prevails in Upper Canada, is that it proceeds chiefly from the judgments of the courts, grounded on approved and established customs, for the British legislature has been at all times sensible of the difficulty and danger of shackling commerce, and therefore merchants have been left to follow their own customs, and to ascertain them in the courts of justice in case of dispute. Now the commerce of Canada must continue to labour under all its present disadvantages while the legislature is so constituted; and there can be no hopes of introducing the English commercial system of laws into the lower province, till there be not only a decided English majority, but a predominance of English feeling, which will be greatly accelerated by changing, as already noticed, the elective franchise. The introduction of the English commercial laws by a clause of the proposed bill, could indeed give no umbrage to the French, because the trade and commerce of the country are principally in the hands of the English, and since it is only from its trade that the province

be useful or of importance to Great Britain, it is on that account the more necessary to introduce the commercial code of the mother country.

Now to show that a mere English majority is not sufficient to do this without a predominance of English feeling, it is to be observed, that the English members have been often as bad and sometimes worse than the French, as is manifested by their conduct in respect of the La Chine Canal, the general utility of which was by their exertions sacrificed for the benefit of Montreal. They likewise acquiesced in refusing to connect the roads between the provinces, and in retaining the money levied for improving the navigation of the St. Lawrence. It is nevertheless hoped, that in obtaining the general adoption of the commercial code of Great Britain, they will join their efforts to those of the members from Upper Canada.

The third great point on which there will be a difference of opinion, regards the laws generally of Lower Canada.

The laws of Lower Canada consist of the custom of Paris, general laws of France, the Roman law, edicts of the French King, ordinances of the Governor in Council, and statutes of the province, forming altogether an heterogeneous mass, and producing great uncertainty in the decisions of the courts. So contradictory are the laws, and

so little applicable to particular cases, that the judges sometimes resort to English law, and even to equity; consequently, it is not possible for a man to know by what law, or on what principles his cause has been decided. This confusion renders titles to property doubtful, clogs trade, and interrupts that good faith which ought to subsist among the people. The laws, by a mixture of French and English, often produce this, among other inconveniences, that persons claim the right of both, and take advantage of that which best suits their purpose. In this manner the payment of debts is evaded and property rendered insecure. It is evident that Lower Canada can never become a fit habitation for British subjects, till these laws are regulated; and, therefore, every means should be used to provide for the gradual introduction of the common and statute law of England (as they prevail in Upper Canada), as the general rule in all matters of controversy, relative to personal property and civil rights, in all actions grounded upon debts, promises, contracts, and agreements, whether of a mercantile or other nature. Nor ought the laws respecting the titles of land; their tenure, descent, alienation, incumbrances and settlement of real estates, and the distribution of the personal property of persons dying intestate to be longer in force; since, by the change now admitted by His Majesty's Government, and which will operate also to the

great advantage of the people, free and common soccage is to be substituted for the present feudal tenure. The laws respecting marriage settlements and dowers, are peculiarly obnoxious to English habits, and have in many instances been attended with the most pernicious effects.

The alteration of the feudal tenure, will render it much more easy to modify the other laws which depend chiefly upon this.

It seems to follow, that in all these particulars the union will either produce a change of system in Lower Canada, or that some of them will be gradually extended to Upper Canada. Now, though it may be unwise to assail rudely the prejudices which support these usages, so pernicious to the true interests of the colony, yet it is the interest of government to weed them out gently and by degrees, and when it is considered that the laws of Lower Canada have not yet been defined, and that the same doubts and uncertainty, which were produced by the Quebec act, still remain, and that in the united legislature, the English will have to combat the prepossessions of their fellow-subjects, who, being generally unacquainted with the nature and the principles of commercial transactions, are little inclined to favour them, great care should be taken to command as full an attendance of the English members as possible.

The most effectual method, of producing a gra-

dual uniformity and agreement on these very important points, which occurs to me, is to alter the 17th clause, which enables the governor, &c., to convene the legislature at such places, within either province, as he shall judge most conducive to the general convenience. This change may be done in three ways: first, by choosing a central place for both provinces for the meeting of the legislature, as was done in the United States, and also in the State of New York, whose legislature removed from New York to Albany, and intends to settle finally at Utica. Secondly, by ordering the sessions to be held alternately for a series of years, at York in Upper, and Quebec in Lower, Canada; or thirdly, determining at once upon Montreal as the seat of government.

The first is certainly the least objectionable, for if the union has been projected, and is to be carried into execution, for the purpose of instilling English feeling into the bosom of the French, through the medium of the Upper Canadians, it seems the best policy to remove them from the pernicious influence which cherishes their errors, when it can be done with perfect justice. If Upper Canada is to be drawn into difficulty to remedy evils which she did not produce, and which, under similar circumstances, she has avoided, it is equitable, and due to her, that she should be put to as little embarrassment as possible. The communications therefore from the executive, and the

access to the seat of legislation, should be facilitated in every way practicable, and when the change of language in debate ~~will~~ contemplated ~~is~~ necessary to gain the object of government, it will hardly be urged that the obligation to travel ~~a~~ few miles further, would be ~~an~~ extreme provision.

Alternate sessions will, no doubt, require much detail relative to the powers of the governor and lieutenant-governor, to prevent interference, but this presents no great difficulty; and it is, notwithstanding, due to Upper Canada that she should not be precipitated from the prosperity she now enjoys, because the representatives of her sister province have been less orderly and wise in their proceedings. Indeed the necessity which obliges the King's government to change the constitution of Upper Canada, that order may take place of the confusion which now rages in the lower province, will no doubt make them anxious to frame it in such ~~a~~ way, ~~as~~ will render it the least injurious to those who have best deserved their approbation and support. To accomplish this, ~~a~~ session in Upper Canada every other year at least for ~~a~~ time, is necessary to prevent the stagnation that must follow the total removal of the legislature.

But independent of the claims of Upper Canada to this indulgence, it will be found impossible to assemble any thing near a majority of

English members in Lower Canada. The representatives from Upper Canada, who are capable of conducting business, are chiefly professional men, and cannot attend the long sessions in Lower Canada, short of absolute ruin. Their absence from home would be so long, that their business would leave them, and their wages are not an equivalent. Nor is the distance which many would have to travel a matter of indifference, as some pretend, but a serious evil, and can only be lightly mentioned by those who have never travelled through the provinces. I do not indeed consider it a decisive argument against the measure, but certainly it ought not to be mentioned as of no moment. It is nevertheless absolutely necessary, that a majority of English members should be present as frequently as possible, but such cannot for many years be the case except they meet in Upper Canada. Not that such alternate sessions will always be necessary; in ten or twelve years, the population will have more than doubled, a greater number of gentlemen will by that time be found willing to become members of assembly, the irritation of the union will have subsided, the public buildings necessary for the united legislature will have been finished, and a vast accession of emigrants will have increased the power and influence of the English.

In fine, it appears to me necessary in order to

give ■ predominance to the British or English interest on these three great leading points, 1st. To change the freehold qualification as suggested, 2d. To choose ■ central place for the meeting of the united legislature, or at least, to direct alternate sessions for eight or twelve years.

It has indeed been suggested, that a more certain attendance of the members might be secured by giving them liberal wages, and this to be in proportion to their actual presence in the House. This to strangers may indeed appear an obvious and effectual remedy, but there are evils attending it which would far more than balance any expected good. Instead of liberal men of intelligence and candour, your representatives would generally be needy demagogues, to whom the wages are an object, and upon which they would contrive to subsist. You take away the motive of honour, and deprive us of any hope of ever seeing wealth and knowledge obtaining their proper influence, if the members are paid so much per day, the sessions become interminable as they are at Washington; if so much for the whole session it becomes ■ job, and business will be neglected or hurried over. Giving wages to members blasts their noble principles of action, which ought to direct the representatives of the people, and raises the dregs of the community over the wealthy, the intelligent and wise.

The two general heads of policy on which the

members of the United Assembly will in all probability agree are,

First, as it respects the assumption of the civil list.

The violent disputes which have subsisted so long between the assembly and legislative council of Lower Canada, have had their origin in providing for the civil list. The assembly not only originate all money bills, but assume every part of the appropriation, so that no deliberation is given to the Upper House. Moreover, although the assembly in 1810 voluntarily offered to assume the civil list, and indeed all the civil expenses, an offer which was not accepted till 1816, yet no sooner was this acceptance announced, than they began to urge the necessity of diminishing the salaries and appointments of those whom they had promised to pay. In Upper Canada this subject has hitherto caused no difficulty, not only because the province has not been able to assume the whole of its civil expenditure, and is aided by an annual vote of the Imperial Parliament, but because much care has been taken to keep the different branches of the revenue separate, and by their frugal application so small a sum has been required in the way of supply, as to afford no decent ground of altercation.

It is, however, much to be feared that in this dispute, assistance will be given after the union by many members from Upper Canada; money

matters are always popular and interesting to the community, and although it be constitutional to vote the civil list for the King's life in this country, many plausible objections may be offered against the practice in colonies. The question has never been put in this shape to the legislature of Upper Canada, as it was thought unnecessary to agitate a matter on which there would be great diversity of opinion, so long as the required supply could be obtained annually in the usual way.

This is not the only, nor indeed the principal difficulty which arises from the assumption of the assemblies, that the entire appropriation, as well as origin of many bills, shall be with them. For this principle is so far extended by considering fines, penalties, &c., as money bills, that the power of deliberation given to the legislative council is confined within very narrow limits, and, if left in its present state, must give rise to continual dissensions.

To remedy this growing evil, and which is indeed the foundation of almost all colonial disputes, it is proposed to insert a clause in the union bill to this effect.

“ That all money bills shall originate in the
 “ House of Assembly, but that the legislative
 “ council may propose and concur in amendments
 “ as in other bills.”

I am not ignorant that this may in this country

be considered unconstitutional, but the state of things here and in the colonies is very different. The legislative councillors are ■ much ■ portion of the people as the House of Assembly ; they are generally persons advanced in life, and better acquainted with the wants of the colony. They are not so much agitated by local interests and popular views, and are, in the whole, better judges of the policy and benefit likely to arise from appropriations of the public money. As according to the prevailing practice, a money bill cannot be touched in the legislative council, if found wrong in the smallest point it is totally lost, and as most bills are by implication considered of this description, the most useful measures frequently miscarry. What makes the evil the greater, there is often little or no communication between the two Houses, and consequently the causes which oblige the legislative council to reject a measure, continue to be unknown to the House of Assembly ; so that no mutual understanding on the subject can take place. Nor is it always, or even frequently, in the power of the executive government to promote the necessary communication between the other two branches, for it often happens that there is no confidential person in the Lower House to whom information can be given, or if there be, he may perhaps possess little or no influence.

There is no parity between the imperial par-

liament and the colonial legislation in this particular. Here His Majesty has His ministers in both houses ; all great measures are first considered in the cabinet before they are introduced. The principal members of one house are minutely acquainted with what is going on in the other. Public opinion stands ready to analyze and correct, or to praise and promote, &c. ; but in a colony there is hardly such a thing yet as a commanding public voice, the influence of the executive is trifling, and does not, like that of the imperial government, hold the balance, and effectually superintend the passing as well as the execution of the laws.

So very sensible were the people of the United States, of the utter impossibility of carrying on public business, were the congress to possess the exclusive privilege of appropriation as well as of originating money bills, and that it would give rise to endless contention, that in the constitution the power of proposing and concurring in amendments to money bills, is expressly given to the senate, retaining to the congress the exclusive power of originating the same.

The adoption of this principle in the Union Bill appears to me essential to its success, and calculated to prevent almost all the disputes which arise among the different branches of the legislature.

The second general head respects religion.

That the Canadas might be attached to the parent state by religious as well as political feelings, was the intention of the great William Pitt, when in forming their constitution he provided for the religious instruction of the people. For it was well known to this illustrious statesman, that almost all the episcopal clergy and their congregations remained during the American rebellion, loyal and faithful to the King, proving by their conduct, that had proper care been taken to promote a religious establishment in union with that of England, the colonies would never have been separated. The same wise policy is still maintained by His Majesty's government, and the great bond of attachment between the colonies and Great Britain depends almost entirely upon the progress and influence of church principles. Were two or three hundred clergymen for example, living in the Canadas, amidst their congregations, and paid through the munificent arrangements of the British Government, they would infuse into the population a tone and feeling entirely English, and acquiring by degrees the direction of education which the clergy at home have always possessed, the very first feelings, sentiments, and opinions of the youth would be British. As I consider this subject the most important, I must request particular indulgence while I state the probable effects of the union on the growth of the established church, unless qua-

lified by the remedies which I shall have the honour to propose.

The population of the two provinces may be calculated at 560,000, of which Lower Canada contains 380,000 and Upper Canada, 180,000.

Of these, the greater portion, or about 350,000 are Roman Catholics, residing chiefly in Lower Canada. Of the remainder, one half may belong to the church of England, and the other, a few sectaries excepted, has no religious character.

Now the bill for uniting the legislatures of Upper and Lower Canada, provides for the gradual increase of the House of Assembly to 120 members, that is sixty members for each province. But the catholic population of Lower Canada amount to 340,000, and can return fifty members. Five may be returned by the adherents of the church of England, and five by the sectaries and neutralists.

In Upper Canada the returns would be different, for the gross population being 180,000, of which the catholics amount only to ten, could return only three.

The sectaries and neutrals, a-	}	23
mounting together to about 70,000,		
may return		

And the church of England, a-	}	34
mounting to 100,000 may return		

In all 60 members.

The united assembly will, therefore, in all probability consist of

Roman Catholics	53
Church of England	39
Sectaries and neutrals	28
	<hr/>
	120

If this calculation be correct it is evident that the general character of the assembly will be Roman Catholic, and as persons of this persuasion are connected by stronger bonds than those of any other, they would command a majority. It is indeed well known, that when one-third of any deliberate assembly is firmly united, they can, by taking advantage of absences and want of concert among their opponents, carry every question; how much more when you have within eight of a majority. The united assembly will therefore be essentially Roman Catholic.

The united legislative council will in all probability, from a knowledge of the individuals, stand thus,

Roman Catholics	14,
Neutral or sectaries	11,
Churchmen	15,

Even in the legislative council so constituted, the majority will commonly be found against the church, because the sectaries will join the catholics. This evil might indeed be partially cured by summoning new members; but all the good

which can result from such a step, would only be, to neutralize the measures of the legislature so long as the assembly bears a Roman Catholic character; but let us revert to the present state of the two churches, that we may see what good or harm the united legislature may do then.

*I. Present state of the Roman Catholic Church
in the Canadas.*

SIX BISHOPS.

Monseigneur Plessis, Bishop of Quebec.

Monseigneur Panet, Bishop of Solda, and co-adjutor to the Bishop of Quebec.

Monseigneur Lartique, Bishop of Talmesse, and acting Bishop of Montreal.

Monseigneur M'Donell, Bishop of Rescina, and acting Bishop to the English Catholics in Upper Canada.

Monseigneur Provencher, Bishop of Juliopolis, acting Bishop of Red River.

Monseigneur Angus M'Eucheron, Bishop of Rosa, and acting Bishop in Prince Edward Island, Cape Breton, and New Brunswick.

These six Bishops have under their direction about two hundred and fifty clergymen, and three colleges or seminaries. Their rights, dues, and privileges, are secured to them by the imperial government, so that the Romish church is entirely independent of the provincial legislature, in what-

ever manner constituted, whether separated or united, as appears from the following analysis.

By the capitulation, dated at Montreal, on the 1st September, 1760, the inhabitants of the province of Quebec are allowed the free exercise of their religion, but in regard to their obligation of paying tithes to the priests, they are to depend upon the King's pleasure.

By the fourth article of the definitive treaty of peace between France, Great Britain, and Spain, signed at Paris, the 10th of February, 1763, His Britannic Majesty on his side agrees to grant the liberty of the Roman Catholic religion to the inhabitants of Canada; he will consequently give the most effectual orders that his Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, ■ as far ■ the laws of Great Britain permit.

This far there was only toleration; but by section 5th of the 14th of the late King, George III, of blessed memory, the Roman Catholic religion is fully established, in as far as respects persons of that persuasion, for it is enacted, "That the clergy of that church may hold, receive, and enjoy their accustomed dues and rights, with respect to such persons only ■ shall profess the same religion.

Here is ■ complete establishment, and it is confirmed by section 25th of the printed bill, for uniting the legislatures of the two Canadas, by

which it is enacted, that persons professing the religion of the church of Rome are to continue in the enjoyment of it, and the clergy of that church are to enjoy their accustomed dues and rights as heretofore, and — is prescribed by the 14th George III.

Hence it appears that the Romish church is entirely established to all intents and purposes, not only in Lower Canada, but also in Upper Canada; for the 14th of the late King respects the province of Quebec, which at that time embraced both provinces; and so complete is this establishment of the Romish church that it cannot be touched, either directly or indirectly, by the colonial legislature, which may do it good, but can do it no harm.

Moreover, the 14th of the late King virtually provides for the extension of the Romish church, since it confers the dues, &c. on every clergyman, within the province of Quebec, wherever settled, if he has a cure of souls; hence parishes are rising in all the new settlements.

STATE OF THE CHURCH OF ENGLAND IN THE CANADAS.

One bishop with nearly fifty clergymen partially under his direction. I say, partially under the direction of the bishop, because they are paid by the Society for propagating the Gospel in Foreign Parts, and correspond with and receive directions from that body.

In sections 35, 36, 37, 38, 39, 40, of the 31st Geo. III, chap. 31st, provision is made for the support of the protestant clergy, but this provision is liable to alteration by the provincial legislatures, under certain restrictions and limitations pointed out in section 42.

From this it is manifest, that the state of the two churches is very different. The provincial legislatures have nothing to do either directly or indirectly with the Romish church, but the same legislatures may vary or repeal or modify the 31st of the King, in as far as respects the church of England.

It may be said that the restrictions and limitations contained in section 42, are such as can never fail to excite attention, and cannot therefore be attended with any danger; but let us suppose, what is not a very violent supposition, that the governor-in-chief and his crown officers are sectaries, and may not the wildest things be carried against the church? From the united legislature the danger will be much greater, as its representations will naturally have more weight, and it is well known that to hurt the church of England, the Roman Catholics of Lower Canada will readily join with all denominations. Indeed this has been proved by a solemn proceeding of the House of Assembly of Lower Canada, last March, composed almost entirely of Roman Catholics, in which they recommend that a share in

the reserved land set apart for the maintenance of a protestant clergy be given to all denominations.

If it be said that no evil has yet resulted from the interference of the legislatures of Upper and Lower Canada, it may be answered, that in Upper Canada attempts have been made, but the situation of the church has been hitherto so poor, and the provision for its support so inadequate, that no jealousy has been excited. In a short time matters will be reversed, for the reserves set apart for the support of the clergy will become in some degree efficient, and unless some remedy be found, the legislatures will interfere, and what they may not obtain from reason, they may carry from persevering obstinacy.

To prevent such interference for the future, the passing of the Union bill offers a good opportunity, and surely it is reasonable to look for equal security for our church in the Canadas, with that which the Romish church already enjoys, and this may be effected by repealing sections 41 and 42 of the 31st of the late King, chap. 31, by which all power respecting religion would revert to the imperial parliament.

This remedy is simple and quite sufficient, and should the colonial legislature become at any time indisposed towards the church, it can remonstrate, and the imperial parliament may, if it think proper, proceed upon such remonstrance.

In order further to strengthen the church of England, the supremacy of the King, as provided for in the 25th section of the printed bill, ought certainly to be established, and His Majesty's right to appoint to all vacant benefices should be actually exercised, for at present all these powers are exclusively enjoyed by the Romish Bishop of Quebec. This prelate discharges, without let or hinderance, all the functions of an archbishop, appoints to benefices, and removes the incumbents at pleasure from one benefice to another. He consecrates bishops and erects districts into bishoprics, and apparently without any authority from the King. He corresponds with the see of Rome, and receives bulls from the Pope, &c. The exercise of all which powers appears to me contrary to the spirit of the 14th Geo. III., and to the instructions transmitted to the governor, lieutenant-governor, &c., respecting the Roman Catholics. Should it be deemed more expedient to allow these instructions to lie dormant, ■ seems to have been the case for many years, then ought the dignitaries of the church of England to be increased, that they may bear some proportion to those of the church of Rome. At present, we have only one bishop and two archdeacons, the Roman Catholics have six bishops and six vicar-generals.

In fine, should the bill for uniting the legislatures of the Canadas pass in its present shape, without any such provisions ■ are suggested, it

will virtually place the church of England in the Canadas under the control of a catholic legislature, so that assailed by the catholics on the one hand, and by the sectaries on the other, the rapid progress which she is now making, and which a little additional countenance and protection would greatly increase, will be quickly arrested, and the most loyal part of the population be discouraged and depressed.

It is evident that the union of the two legislatures must soon be followed by the union of the executive governments. So long as there are two different powers to put in force the acts of the same legislature, there will be conflicting opinions, and an absence of that unity of action, which is so necessary to promote and secure the prosperity of the country. But this certain consequence of the union, which has not yet been generally noticed, as it will increase the distaste of the inhabitants of Upper Canada to the measure, renders it the more necessary to smooth matters by meeting it with as much advantage which will be found a full equivalent. This may be done, by introducing a part of the union, or as consequent upon its adoption, a court of appeal for both provinces. The want of such a court is severely felt in Upper Canada, and the one which exists in Lower Canada is extremely unpopular, and can never from the nature of its construction command either confidence or respect.

The common Courts of Justice, at present

existing in the provinces, cannot well be consolidated, because the laws respecting fixed property and civil rights are different in each; and although from the operation of that clause of the Trade Bill, passed in 1822, to regulate the commerce and settle the differences between Lower and Upper Canada, which allows the feudal titles to be changed into those of free and common socage, will gradually bring these laws nearer one another, yet the continuance of the present courts of justice will be expedient, on account of the differences in law usages and manners which will still remain, as well as the vast extent of the countries and the gradual accumulation of business. But these things form no good objection to a supreme court of appeal for the united provinces, which would be productive of infinite good, by introducing by degrees a certain system of proceeding, and principles of decision, on which the solicitors might depend. The judges in this court would sit as the Lord Chancellor, and the lords sit upon Scotch appeals, and finally decide them without any reference, except in extreme cases, to the King in council. Such a court would soon produce a community of interest throughout the united provinces, and be received as a great boon by its inhabitants.

As to the objection, that the judges might be ignorant of the laws of Lower Canada, it falls to the ground, not only from the fact, that the chief justice of that province has commonly been an

English lawyer, but also from the certainty that persons placed in such a high station will soon qualify themselves to discharge its various duties.

These remarks having arrived at a greater length than was intended, I hasten to conclude with recapitulating the additions to the draft, which I consider essential to the success of the measure.

1st. That the duration of the united legislature be seven instead of four years.

2d. As it may not be deemed expedient to divide the country anew, and lessen the number of members of Assembly, I propose to confine the elective franchise to persons possessing a freehold of 5*l.* per annum instead of forty shillings; and in towns of 10*l.* yearly value, or having resided one year in a house, paying a rent of 20*l.* per annum.

3d. The introduction of the commercial laws and customs of England into Lower Canada, with the same exceptions and limitations as they are now used in Upper Canada.

4th. To fix upon a place, central to the united province, for holding the legislature, or if this be thought objectionable, that the sessions be alternate for the first two or three parliaments.

5th. That all money bills shall originate in the House of Assembly, but that the Legislative Council may propose and concur in amendments, as in other bills.

6th. As the colony does not support the pro-

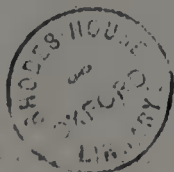
testant church, it appears to me more wise to withdraw the power from the united legislature of meddling with religion, reserving it for the imperial parliament, which may easily be done by repealing the 41st and 42d clauses of the 31st Geo. III. chap. 31.

7th. To settle the question of the King's supremacy, and circumscribe the extraordinary and dangerous powers at present exercised by the Roman Catholic Bishop of Quebec, it is expedient to adopt the 25th clause of the printed bill respecting the Roman Catholic Church, and the appointment to benefices.

8th. To establish a supreme court of appeal for the united province.

9th. I think it better to leave the Trade Bill, settling the differences between the provinces as it is, since the united legislature will be most competent to suggest the necessary modifications.

THE END.



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PROBABLE STATE

OF THE HOUSE OF ASSEMBLY IN THE UNITED
LEGISLATURE.

A new Election takes place in both Canadas, this
Summer.

LOWER CANADA.

The same Members may be returned for this
Province that served during the last four years.

They consisted, as far as I can find, of Frenchmen	40
of Englishmen	10
	—
	50
	—

Unfortunately several of the English Members (as,
indeed, has generally been the case) were violent
oppositionists; if they should act otherwise, it is easy
for the French Canadian population to change most
of them at any future Election, as will appear from
the national character of the Inhabitants of those
places for which Englishmen were chosen.

<i>Counties.</i>	<i>Catholics.</i>	<i>Protestants.</i>	
Dorchester	17,189	200	} These Counties are each entitled to return two Mem- bers, and they elec- ted one French Canadian, and one Englishman.
Effingham	15,025	300	
Leinster	22,697	165	
Quebec	22,339	6000	

It is quite evident that the Roman Catholics can in these counties return Frenchmen, if they please, and thus dispose of four of the ten English Members.

The remaining six Members are returned,

1 For Three Rivers, who may be a Frenchman, as the English inhabitants of the Town cannot as yet command the Election.

1 For William Henry, who may always be counted upon as English and Loyal.

2 For Montreal

2 For Quebec

Each of these cities return Four Members, and it has generally happened that two of each nation have been chosen, but whether this courtesy would continue, I cannot determine.

6

Should the Union take place, the New Townships will return ten English Members of a mixed character; and not more than sixteen Englishmen can be reasonably expected on the part of Lower Canada, in the joint House of Assembly, which deducted from 60, the whole number of Representatives leaves 44 Frenchmen.

UPPER CANADA.

The House of Assembly of Upper Canada, which has just expired, consisted of 40 members, but by the operation of the law for increasing the Representation, the number to be elected this Summer, will be 44 or 46; we shall say 46, as the more probable. Of these, three will be Roman Catholics.

In the last Assembly, the Divisions were commonly as three to two in favour of Government, or 24 to 16. On the most favourable supposition, therefore, the New House of Assembly will be 28 to 18.

Assuming the above, as correct data, the first United House of Assembly will consist of Members

For Lower Canada	60
For Upper Canada	46
	<hr/>
	106
	<hr/>

As distinguished by Religion,

Roman Catholics, perhaps 50, but certainly	47
Protestants of all denominations	59
	<hr/>

As distinguished nationally,

French Canadians	44
Englishmen	62
	<hr/>

Giving ■ majority of Englishmen of all descriptions 18

This Majority will increase at every Election, till the number of Members for Upper Canada amount to 60; thus adding 14 to the former majority of 18, making it 32.

The number of English Members will increase from other causes.

First. From the great influx of British Emigrants.

Second. From changing the Tenure of land, which will introduce the system of County Registers, and thus deprive the Notaries of half their influence.

Third. From British Capitalists purchasing Seigniories, and thus acquiring an influence over their French Canadian Tenants.

Fourth. From ordering the Legislature to meet at a place central for the Canadas. The Canadian French have little public spirit; out of 50, the number of Members in their present House of Assembly, hardly more than 30 ever attend; often fewer; were the place of meeting, therefore, convenient for both Provinces, it is probable that very few French Canadians would be regularly present.

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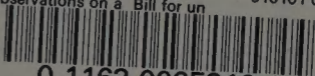
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Strachan, John, bp. of Toronto,
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